SINGLE BENCH

c.f. 10/-

IN THE HONOURABLE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 7363 OF 2006 (S.B.)

PETITIONERS
DEFENDANTS

1. Govind Mishra, aged about 30 years Son of Shri Subhash Mishra;

2. Murari Mishra, aged about 33 years, Son of Shri Subhash Mishra;

Both residents of Anand Vihar, Anand Nagar, Raipur, Tahsil and District Raipur (C.G.).

P.R. No. 7492/06
Presented by Shri Avinash K. Mishra
dated 19/12/06

VERSUS

RESPONDENTS
PLAINTIFFS

1. Sanjay Kumar Kanda, aged about 41 years, Son of Shri Mohan Lal Kanda;

2. Smt. Kavita Kanda, aged about 38 years Wife of Shri Sanjay Kanda;

Both residents of Noida (U.P.), through their Attorney Aaditendra Shukla Son of Late Shri Ramashankar Shukla, Resident of Shankar Nagar, Khamhardeeh, Raipur, Tahsil and District Raipur (C.G.).

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DEFENDANTS

3. Devtanu Chakravorty, aged about 33 years Son of Shri R. C. Chakravorty, Resident of

Shyam Nagar, Raipur, Tahsil and District Raipur (C.G.).

4. State of Chhattisgarh, Through: The Collector, Raipur, District Raipur (C.G.).

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C).No.7363/2006 **सन् 200**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23-1-2007

Shri P.K.C. Tiwari, Sr. Advocate with Shri Shashi Bhushan, Advocate for the petitioners.

Heard on admission.

By this petition, the petitioners have challenged the order of Annexure P-1 dated 22-11-2006 passed by the 5th Civil Judge Class I, Raipur whereby the petitioners' objection with respect to the maintainability of the suit through power of attorney has been rejected and it has been held that the plaint has been properly filed.

The grievance of the petitioners is that there is specific provision under Order 6 Rule 14 of the C.P.C. that every pleading is to be signed by the party and his pleader and only under exceptional circumstances, it may be signed by any person dully authorized by him to sign the same.

Learned counsel for the petitioners submits that from perusal of the plaint of Annexure P-2, it is evident that there is no pleading with respect to the reason as to why the plaint has not been singed by the plaintiffs and instead by their power of attorney. Further objection of the petitioners is that the power of attorney filed by the plaintiffs along with the plaint is not properly stamped and as per Indian Stamps Act, the Court ought to have impounded it on the ground of deficiency of the stamp duty appended with the document.

I have heard learned counsel for the petitioners.

It is settled law that a plaint cannot be rejected simply on the ground of improper verification or any defect of the same nature and

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मामला क्रमांक W.P.(C) No. 7363/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the defect, if any, can be rectified by the party in subsequent proceedings. So far as the objection of the petitioners that the power of attorney is not drawn on properly stamped paper is concerned, from the application under Order 6 Rule 14 of C.P.C., it is observed that no specific objection with respect to the stamp on the said document has been raised.

In the aforesaid circumstances, this petition may be disposed of with a direction to the Court below to give an opportunity to the plaintiffs to cure the defect pointed out by the petitioners so far as pleading part in the plaint is concerned. So far as other objection regarding improper stamp duty is concerned, if the objection is raised by the petitioners, the same shall be decided by the trial Court in accordance with law.

The petition is disposed of with the above directions.

Consequently, M.W.P.No. 5112/2006 also stands disposed of.

Certified copy as per rules.

Sd/-
Dhirednra Mishra
Judge

P.T.O.